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NO. 82-647

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

DONALD J. KIRKPATRICK,
Petitioner,

v.

CHRISTIAN HOMES OF ABILENE, INC., and the 326th DISTRICT COURT OF TAYLOR COUNTY, TEXAS,
Respondents.

On Appeal From The Supreme Court Of The State Of Texas

RESPONDENT'S BRIEF IN OPPOSITION ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

CHARLES E. MYERS
Counsel of Record for Christian Homes of Abilene, Inc.
RHODES, DOSCHER & HEATHERLY
104 InterFirst Building
Abilene, Texas 79601
(915) 677-2493

Alpha Law Brief Co., Inc.—5606 Parkersburg—Houston, Texas 77036—223-3003

QUESTIONS PRESENTED FOR REVIEW

1. WHETHER THE "BEST INTEREST OF THE CHILD" STANDARD USED IN § 13.21 OF THE TEXAS FAMILY CODE VIOLATES THE MINIMUM STANDARDS OF DUE PROCESS IN ITS APPLICATION TO UNWED FATHERS IN VOLUNTARY LEGITIMATION PROCEEDINGS.

2. WHETHER THE "BEST INTEREST OF THE CHILD" STANDARD USED IN § 13.21 OF THE TEXAS FAMILY CODE VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION BECAUSE OF THE DISCRIMINATORY TREATMENT OF UNWED FATHERS IN VOLUNTARY LEGITIMATION PROCEEDINGS.

3. WHETHER § 13.21 OF THE TEXAS FAMILY CODE IS CONSTITUTIONALLY INFIRM BECAUSE IT PLACES UPON THE UNWED FATHER THE BURDEN OF PROVING THAT LEGITIMATION WOULD BE IN THE CHILD'S BEST INTEREST.

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To The Honorable Chief Justice And Associate Justices Of The Supreme Court Of The United States:

Respondent, CHRISTIAN HOMES OF ABILENE, INC., prays that the United States Supreme Court deny Petitioner's Petition For Writ Of Certiorari filed in this

cause to review the judgment of the Court of Appeals for the Eleventh Supreme Judicial District of Texas. The Texas Supreme Court refused to grant Petitioner's Application for Writ of Error on June 16, 1982 and overruled Petitioner's Motion for Rehearing on July 14, 1982.

RESPONDENT'S JURISDICTIONAL STATEMENT

Petitioner, in the courts below, challenged the constitutionality of Section 13.21 of the Texas Family Code which sets forth the procedure mandated for an unwed father to establish his paternal rights to his illegitimate child wherein there is no requirement of a showing of "unfitness". Petitioner now for the first time attacks the "best interest of the child" standard required by Texas in voluntary legitimation proceedings in his Petition for Writ of Certiorari. Respondent, therefore, challenges the jurisdiction of this Court to consider the Petition for Writ of Certiorari for the reason that the question now alleged was never properly presented below. The question of whether or not a showing of "unfitness" was required in a voluntary legitimation proceeding has been previously answered by this Honorable Court in *Quillion v. Walcott*, 434 U.S. 236, 98 Sup. Ct. 549, 54 L.Ed.2d 511.

Respondent further challenges the jurisdiction of this Court to consider Petitioner's Petition for Writ of Certiorari for the reason that Petitioner did not attack the "burden of proof" required by the Texas Statutory scheme in the Court below, and, therefore, the question now alleged was never properly presented. Texas requires a "clear and convincing" standard in paternal "termination" suits, as distinguished from a "voluntary legitimation" proceeding such as Petitioner sought in the Court below, and, therefore, Petitioner's reliance upon this Court's deci-

sion in *Santosky v. Kramer*, 71 L.Ed.2d 599, is misplaced. *In Re G. M.*, 596 S.W.2d 846, 847 (Tex. 1980).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Statutes involved in this case are selected provisions of Chapters 11, 12, 13 and 15 of the Texas Family Code which provisions are set forth in verbatim in the Appendix to this Brief in Opposition.

RESPONDENT'S STATEMENT OF THE CASE

The child, the subject of this suit, was born out of wedlock on January 11, 1981. It was the mother's desire to give up her parental rights to the child and to have CHRISTIAN HOMES OF ABILENE, INC. place the child for adoption. In order to place the child for adoption, Respondent, CHRISTIAN HOMES OF ABILENE, INC., a licensed child placement service, filed suit to terminate the parent-child relationship on January 15, 1981. Petitioner filed his Petition for Voluntary Legitimation on February 3, 1981, and the matter was tried to the 326th District Court of Taylor County, Texas, on August 28, 1981. Participating at the trial were the attorneys for CHRISTIAN HOMES OF ABILENE, INC., Rhodes, Doscher & Heatherly by Charles E. Myers, and the attorneys for Petitioner KIRKPATRICK, Robinson, Hanna, Moore & Holloway, Inc. by Sam Moore. The child was represented by her attorney ad litem, Malcolm Schulz, and the mother, who was a minor at the time of the hearing, was represented by her attorney ad litem, Stan Brown.

The record shows that Petitioner was 22 years of age at the time he began his clandestine meetings with the 14 year old mother, and that she was 15 at the time of

the birth of the child. (S.F. 51) Petitioner and the mother have never lived together and have never established a family relationship. Contrary to the eagerness with which Petitioner allegedly sought to assume parental responsibility, the record of the trial demonstrates that Petitioner constantly evidenced ambivalence toward the future of the child. From his first knowledge of the pregnancy until after the child was born, he expressed a desire at times to allow the child to be placed for adoption, a desire at other times to assert his rights, and a desire at yet other times to do whatever the mother of the child wanted. (S.F. 45, 124, 127, 161) His wishes concerning the future of the child were always intertwined with his desire to marry the mother (S.F. 30, 42, 43, 49, 50, 51, 144), and his position at any given time was dependent upon who had last talked with him. (S.F. 127)

The record shows that Petitioner's family had strong opinions concerning marriage and pregnancy and felt that marriage was the mandatory result of pregnancy whether or not such marriage was in the child's best interest. (S.F. 42, 82, 117, 126, 128, 145, 146)

Contrary to Petitioner's assertions that Petitioner eagerly sought to support the mother during her time of pregnancy, and likewise sought to pay her medical expenses, the record shows that Petitioner sent the mother only $70.00 while she was at CHRISTIAN HOMES (S.F. 65), and that he never offered or attempted to pay her room and board or medical bills which were in excess of $4,000.00. (S.F. 168) The payments which were ceremoniously paid to the District Clerk were begun only after the filing of his Petition for Voluntary Legitimation; were begun on the advice of his attorney, and were never received by the mother. (S.F. 80, 81)

Contrary to Petitioner's alleged eagerness to be informed of the welfare of the child, the record shows that he never sought to contact CHRISTIAN HOMES on that subject (S.F. 169), and that he never expressed any such concern in conversations with the mother after the birth of the child. (S.F. 50)

After hearing the evidence produced at trial, the trial court rendered judgment denying Petitioner's Petition for Voluntary Legitimation. The Court of Appeals for the Eleventh Supreme Judicial District of Texas affirmed the Trial Court's decision in its opinion quoted in verbatim in the Appendix to Petitioner's Petition for Writ of Certiorari at pp. A-5 through A-17. The Texas Supreme Court has denied Writ of Error.

SUMMARY OF THE ARGUMENT

The discriminatory treatment of unwed fathers, if any, is substantially related to the important state objective of promoting the best interest of children born out of wedlock and is substantially related to the achievement of that objective. Therefore, Respondent CHRISTIAN HOMES OF ABILENE, INC., contends that the "best interest of the child" standard as used in Section 13.21 of the Texas Family Code can be constitutionally applied to the class of unwed fathers when establishing their status as a parent even though all mothers and married fathers are given the status of a "parent" without application of the "best interest of the child" standard.

Respondent, CHRISTIAN HOMES OF ABILENE, INC., further contends that the "clear and convincing evidence" standard as enunciated by this Court in *Santosky*

v. Kramer,[1] is inapplicable to the facts of this case for the reason that Petitioner seeks to voluntarily establish a parental relationship. This is not a proceeding to terminate Petitioner's parental rights, and were it such a proceeding the "clear and convincing evidence" standard would have been applied in accordance with the Texas Supreme Court's decision of *In Re G. M.*[2]

Respondent further argues that Petitioner failed to properly present his argument as it relates to the "best interest of the child" standard and as it relates to the "burden of proof" in the court below.

ARGUMENT AND AUTHORITIES

Petitioner advances three alleged constitutional infirmities to the Texas Family Code. Each of Petitioner's contentions will be discussed below.

I.

Petitioner contends that the Texas Statutory scheme used to "terminate a parent-child relationship" violates due process of law for the reason that:

1. It fails to require a showing of unfitness and potential harm to the child (a showing of "potential harm" is raised by Petitioner for the first time in his Petition for Writ of Certiorari), and

2. It is unconstitutionally vague ("vagueness" is also raised for the first time by Petitioner in his Petition for Writ of Certiorari).

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1. *Santosky v. Kramer,* 71 L.Ed.2d 599.

2. *In Re G.M.*, 596 S.W.2d 846 (Tex. 1980).

Respondent alleges that Petitioner, DONALD KIRKPATRICK, has no constitutional complaint whatsoever in regards to his alleged denial of due process for the reason that this Honorable Court has previously answered the "unfitness" question in *Quillion v. Walcott*.[3] Contrary to Petitioner's contentions that his "parental rights" have been unconstitutionally "terminated", Respondent would respectfully show this Court that under the Texas Statutory scheme it is incumbent upon the unwed father to petition the appropriate Court to recognize his parental rights.[4] Petitioner, DONALD KIRKPATRICK, did so petition the 326th District Court of Texas; did fully participate at the hearing, but failed to convince that Court that it would be in the child's "best interest" to grant his petition for voluntary legitimation. Unlike *Stanley v. Illinois*,[5] *Caban v. Mohammed*,[6] and *Santosky v. Kramer*,[7]

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3. *Quillion v. Walcott*, 434 U.S. 236, 98 S.Ct. 549, 54 L.Ed. 2d 511.

4. *Id.* . . .
In *Quillion v. Walcott*, Leon Webster Quillion sought to block the adoption of his illegitimate child by the child's stepfather Ardell William Walcott. Under the Georgia law, no adoption of a child born in wedlock was permitted without the consent of each living parent. The Georgia law further provided that only the mother's consent was required if the child was illegitimate. However, the Georgia law provided a procedure whereby the unwed father could obtain veto authority over the adoption if he legitimated the child. Georgia required a finding of the child's best interest before allowing the legitimation over Mr. Quillion's objection that the state must be required to show his unfitness as a parent before denying him the veto authority of a parent. The Texas legitimation statute, § 13.21 is similar as is Petitioner KIRKPATRICK's claim of Leon Webstser Quillion.

5. *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972).

6. *Caban v. Mohammed*, 441 U.S. 380, 99 S.Ct. 1760, 60 L.Ed.2d 297 (1979).

7. *Id.*, note 1.

the case presently before this Court for consideration involves an attempt to establish a parental relation rather than the termination of such a relationship or the change of a custodial status.

Petitioner KIRKPATRICK contends that the Texas Statutory scheme denies him the opportunity to establish a family relationship with his illegitimate child. Petitioner alleges that he repeatedly sought to marry and care for the mother. Petitioner alleges that he repeatedly sought to provide support for the child, to obtain custody of the child and to raise the child as his own. However, Petitioner contends that the non-existence of any family ties prevented him from establishing such a parent-child relationship. Contrary to Petitioner's assertions, Section 13.21, Texas Family Code, recited in verbatim in the Appendix of Respondent's Brief in Opposition, does provide the procedure whereby Petitioner was given the opportunity to come forward and establish the heretofore non-existent relationship.

Stanley,[8] *Caban*[9] and *Quillion*[10] all involved factual situations in which there existed a de facto parent-child relationship for the reason that in each case the unwed fathers had participated in the raising, nurturing and support of their illegitimate children. Had this case involved such a de facto relationship, in Texas there would have existed a "common law marriage"[11] relationship and it is sub-

8. *Id.*, note 5.

9. *Id.*, note 6.

10. *Id.*, note 3.

11. *Humphreys v. Humphreys*, 364 S.W.2d 177 (Tex.) Reh. denied, rev'd on other grounds.

". . . Elements of a common law marriage are: agreement presently to be husband and wife; living together as husband and

mitted by Respondent that under such circumstances and under the Texas law Petitioner would have been entitled to the rights of a parent and his rights could be terminated only by compliance with Section 15.02, Texas Family Code. However, those facts do not exist in this case, and it is submitted that under the facts as they do exist Petitioner KIRKPATRICK'S due process guarantee is adequately protected by the Texas Family Code which requires a showing of "best interest" before allowing legitimation.

Respondent excepts to Petitioner's contention that the "best interest of the child" standard is unconstitutionally vague. To the contrary, the standard employed by the Texas Family Code allows the unwed father greater flexibility to petition the appropriate Court and show that the best alternative for the child would be to allow the legitimation. The Texas Statutory scheme, although excluding unwed fathers under the statutory definition of "parent",[12] is not conclusive for the reason that it allows the unwed father a procedure wherein he can show the Court on an individualized basis that it would be in the child's best interest to recognize him as a "parent".[13] Unlike the statutes involved in *Stanley v. Illinois*[14] and *Caban v. Mohammed*[15] Petitioner was given the "opportunity to make his case" and show that he was ". . . deserving of custody of his offspring".[16]

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wife; and a holding of each other out to the public as husband and wife."

12. V.T.C.A., Family Code, Sections 11.01(3) and 12.02.
13. V.T.C.A., Family Code, Section 13.21.
14. *Id.*, note 5.
15. *Id.*, note 6.
16. *Id.*, note 5 at p. 561.

Rather than locking the unwed father into strict arbitrary standards, under the Texas Statutory scheme, he is allowed the flexibility of showing every aspect which may be in the "child's best interest". Petitioner under the Texas Statutory scheme was afforded such a right to be heard; Petitioner fully participated at the trial, but Petitioner failed to convince the Court that he should be recognized as a "parent" of Baby Girl S. Petitioner has not been denied his right to Due Process.

II.

Petitioner advances the theory that since there is a "best interest of the child" standard placed upon unwed fathers under Chapter 13 of the Texas Family Code, he has been denied equal protection under the law for the reason that Chapter 13 is allegedly sexually discriminatory. Respondent contends that the discrimination contained in Chapter 13 of the Texas Family Code, if any, can be constitutionally applied to the class of unwed fathers when establishing their status as a parent even though, under the Texas Statutory scheme, all mothers and married fathers are given the status of a "parent" without application of the "best interest of the child" standard for the reason that such discriminatory treatment, if any, is substantially related to the important State objective of promoting the best interest of children born out of wedlock and is substantially related to the achievement of that objective.[17]

Stanley[18] does not decree that all unwed fathers have fundamental rights to full parental status or that every statutory discrimination against the unwed father is sus-

17. *Craig v. Boren*, 429 U.S. 190 (1976).

18. *Id.*, note 5.

pect. The overriding interest of the State and the Courts is the welfare of the affected children.[19] Nor does the Equal Protection Clause mandate that all biological fathers be treated equally.[20] If the distinction is created to achieve the promotion of the legitimate State interest, i.e. the welfare of illegitimate children, the distinction is not unconstitutional.[21]

Respondent contends that the State has an interest in protecting children conceived and born out of wedlock, and relies upon the rationale expressed by the Texas Supreme Court in its opinion in *In the Interest of T.E.T.*[22] Who could better show that the child's best interests would be served by allowing the unwed father the status of a parent than the unwed father seeking that status? It is therefore submitted that rather than placing an unconstitutional burden upon Petitioner, the Texas Statutory scheme allows Petitioner the means whereby he can show the merits of his pursued status.

This Court's opinion in *Caban v. Mohammed*[23] is distinguishable from the present case now before the Court. In *Caban* this Court held unconstitutional a New York

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19. *In the Interest of K.*, 535 S.W.2d 168 (Tex.), Cert. denied 429 U.S. 907, Reh. denied, 429 U.S. 1010 (1976).

20. *Id.*, note 3.

21. *Id.*, note 6.

22. *In the Interest of T.E.T.*, 603 S.W.2d 793 (Tex.) *Cert. denied* 450 U.S. 1025.

> "The State has a valid objective in requiring the biological father to establish his "status" as a parent. Otherwise, we would recognize a sperm donor, a rapist, a hit and run lover, an adulterer and the like in the same legal status as a father who had accepted the legal and moral commitment to his family."

23. *Id.*, note 6.

statute that granted an unwed mother the authority to block the adoption of her child simply by withholding her consent, but did not give an unwed father a similar right. Nor did the New York statute provide a procedure whereby the unwed father could attain the status of a parent by legitimating his children. The Petitioner urges this Court to hold unconstitutional portions of the Texas Family Code based upon the rationale set forth in the *Caban* decision.

It is submitted by Respondent that the decision reached by this Court in *Caban* is limited to the circumstances of that case wherein the natural father had established a family relationship with his children and had previously participated in the rearing of the children.[24] Petitioner KIRKPATRICK had not established such a relationship, had not participated in the child's rearing nor had he participated in the daily supervision, education, protection or care of the child.

Chapter 13 of the Texas Family Code provides a procedure which allows the unwed father to show on an

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24. *Id.*, note 22.
The Texas Supreme Court stated in *In the Interest of T.E.T.*,
". . . the Court made it clear that its *Caban* opinion must be read in the light of the unusual circumstances of the case. There the unmarried parents had lived together for five years as husband and wife, during which period two children were born to them. They then separated and the mother married Mohammed. Eventually Mohammed sought to adopt the children with the mother's consent. The facts of the *Caban* case illustrated the injustice of that discrimination as applied to parents who have lived as a family unit for years. . . .
The *Caban* Court carefully pointed out that appropriately limited distinctions between the rights of the mother and rights of the father are not necessarily improper."

individualized basis the merits of his action while at the same time balancing the compelling State interest in the welfare of illegitimate children. If all unwed fathers were given the status of a "parent" the State would be required to petition the Court in each and every case without regard to the concern or lack of concern of the alleged father and would be required to prove "by clear and convincing evidence" that the unwed father "parent" had committed one or more of the acts or omissions contained in § 15.02 of the Texas Family Code before the illegitimate child could be placed in a suitable home for adoption. Respondent does not take the position that all unmarried fathers are unsuitable to be considered parents. However, because of the sheer number of illegitimate births, it would disserve the interest of the State and the illegitimate child if the State were required to follow the procedure advocated by Petitioner. On the other hand, the procedure employed by Texas in voluntary legitimacy cases adequately allows the procedural safeguards mandated by the United States Constitution and is not constitutionally infirm merely because fathers of illegitimate children are treated differently as a class than are unwed mothers and married fathers for the reason that the distinction is related to the achievement of a valid State interest.

Petitioner also advances the argument that the Texas Statutory scheme unconstitutionally discriminates against illegitimate children. Respondent would first show unto this Court that Petitioner lacks standing to advance any claim on behalf of Baby Girl S. or on behalf of illegitimate children in general. There has been no appeal on behalf of Baby Girl S. from the decision of the District Court.

Baby Girl S. was represented at the Trial Court by her attorney ad litem who fully participated at the hearing. Petitioner has failed until now to assert any constitutional claim on behalf of Baby Girl S. or on behalf of illegitimate children in general, and he is, therefore, precluded from doing so now.

Furthermore, *Gomez v. Perez*[25] is inapplicable to the case now before this Court. The *Gomez* decision addressed itself to the right of a child for support. Texas recognizes the child's right for support and provides the procedure for the implementation of that right. Sections 13.01 through 13.09, Texas Family Code, recited in verbatim in the Appendix to Respondent's Brief in Opposition.

Even if Petitioner's contentions as they are addressed to the alleged rights of illegitimate children were in any way meritorious, those merits would be outweighed by the prevailing State interest concerning the welfare of illegitimate children. Were Petitioner's contention worthy of consideration, every legitimate child would be required to remain in a state of "limbo" until such time as he or she reached majority.

It is submitted by Respondent that the prevailing State interest, as well as the child's interest, balances any alleged discrimination directed to the unwed father under the Texas Statutory scheme and for that reason, Petitioner has not been denied his constitutionally protected right under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

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25. *Gomez v. Perez*, 409 U.S. 535, 34 L.Ed.2d 56, 93 Sup. Ct. 872 (1973).

III.

Petitioner contends that the Texas Statutory scheme employs an improper standard of proof and wrongfully places the burden of proof on the "parent who is the target of the termination proceeding" contrary to this Court's decision in *Santosky v. Kramer*.[26] Respondent alleges that Petitioner KIRKPATRICK has no constitutional complaint whatsoever in regard to *Santosky*. *Santosky* involved a New York statute that allowed the termination of parental rights upon a finding of the child's "permanent neglect", and further required such a finding upon a "fair preponderance of the evidence". This Court held that the standard employed by New York was inadequate for the reason that the preponderance standard did not adequately convey to the fact finder the level of subjective certainty about his factual conclusions necessary to satisfy due proces. This Court reasoned that since the private interest, i.e. the termination of parent-child relationships is "commanding and the threatened loss is permanent", a preponderance standard does not "fairly allocate the risk of an erroneous fact finding between the State and the natural parents".[27]

Petitioner's suit was one to "establish his parental rights" as opposed to a suit to "terminate his parental rights". The rationale in *Santosky* is, therefore, not applicable. Had there been a family relationship in existence, the "clear and convincing evidence" standard enunciated by *Santosky* would be applicable to this case and would have been required by the Texas Courts pursuant to the

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26. *Id.*, note 1.

27. *Id.*

Texas Supreme Court's decision in *In Re G. M.*[28] However, since Petitioner sought to "establish his parental rights" the requirements of the Texas Statutory scheme requiring him to show such relationship to be in the "child's best interest" does not violate the rationale of *Santosky v. Kramer*.

Not only does Petitioner attack the standard of proof employed by the Texas Statutes, but Petitioner also contends that the Burden of Proof is wrongfully placed on him. Petitioner contends that it should be the State's burden to come forward and prove that he should not be allowed to attain the status of "parent". However, Petitioner fails to recognize the State's interest as well as the rationale of *Stanley*[29] wherein this Court held that Stanley was denied due process by the Illinois statute which denied him the right to come forward and show that he was worthy of parentage. The Burden of Proof employed by Texas adequately protects Petitioner's constitutionally protected rights.

CONCLUSION AND PRAYER

In conclusion, Respondent would submit that § 13.21 of the Texas Family Code is not constitutionally infirm and further that this Court should not accept jurisdiction of this case for the reasons that the questions alleged by Petitioner here were either not properly presented below or have been addressed and answered by this Court in previous decisions.

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28. *Id.*, note 2.

29. *Id.*, note 5.

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Respondent respectfully submits that the Petition for Writ of Certiorari be denied and that Petitioner be ordered to pay all costs.

Respectfully submitted,

CHARLES E. MYERS
State Bar No. 14759000
Counsel of Record for Christian Homes of Abilene, Inc.
RHODES, DOSCHER & HEATHERLY
104 InterFirst Building
Abilene, Texas 79601
(915) 677-2493

CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of Respondent's Brief In Opposition On Petition For Writ Of Certiorari to the United States Supreme Court has been mailed to BURT NEUBORNE, Attorney for Petitioner, American Civil Liberties Union Foundation, 132 W. 43rd Street, New York, New York 10036, postage prepaid, return receipt requested on the _____ day of November, 1982.

CHARLES E. MYERS

APPENDIX

TEXAS FAMILY CODE

Section 11.01. Definitions

As used in this subtitle and Subtitle C of this title,[1] unless the context requires a different definition:

(1) "Child" or "minor" means a person under 18 years of age who is not and has not been married or who has not had his disabilities of minority removed for general purposes. "Adult" means any other person.

(2) "Court" means the district court, court of domestic relations, juvenile court having the jurisdiction of a district court, or other court expressly given jurisdiction of a suit under this subtitle.

(3) "Parent" means the mother, a man as to whom the child is legitimate, or an adoptive mother or father, but does not include a parent as to whom the parent-child relationship has been terminated.

(4) "Parent-child relationship" means the rights, privileges, duties, and powers existing between a parent and child as provided by Section 12.04 of this code.

(5) "Suit affecting the parent-child relationship" means a suit brought under this subtitle in which the appointment of a managing conservator or a possessory conservator, access to or support of a child, or establishment or termination of the parent-child relationship is sought.

(7) "Authorized agency" means a public social agency authorized to care for children or to place children for adoption, or a private association, corporation, or person approved for that purpose by the Texas Department of Human Resources through a license, certification, or other means.

(8) "Illegitimate child" means a child who is not and has never been the legitimate child of a man and whose parent-child relationship with its natural mother has not been terminated by a court decree.

(9) "Governmental entity" means the state, a political subdivision of the state, or an agency of the state.

Section 12.02. Relation of Child to Father

(a) A child is the legitimate child of his father if the child is born or conceived before or during the marriage of his father and mother.

(b) A child is the legitimate child of his father if at any time his mother and father have attempted to marry in apparent compliance with the laws of this state or another state or nation, although the attempted marriage is or might be declared void, and the child is born or conceived before or during the attempted marriage.

(c) A child is the legitimate child of a man if the man's paternity is established under the provisions of Chapter 13 of this code.[1]

Section 13.01. Time Limitation of Suit

A suit to establish the parent-child relationship between a child who is not the legitimate child of a man and the

child's natural father by proof of paternity must be brought before the child is four years old, or the suit is barred.

Section 13.02. Pretrial Proceedings: Blood Tests

(a) When the respondent appears in a paternity suit, the court shall order the mother, alleged father, and child to submit to the taking of blood for the purpose of one or more blood tests. If the appearance is before the birth of the child, the court shall order the taking of blood to be made as soon as medically practical after the birth.

(b) An order issued under this section is enforceable by contempt, except that if the petitioner is the mother or the alleged father and refuses to submit to the blood test, the court shall dismiss the suit. If the respondent is the mother or the alleged father and refuses to submit to the blood test, the fact of refusal may be introduced as evidence as provided in Section 13.06(d) of this code.

Section 13.03. Pretrial Proceedings: Appointment of Experts

(a) The court may appoint one or more experts qualified as examiners of blood types to make the blood tests. The court may determine the number and qualifications of the experts and shall prescribe the arrangements for conducting the tests.

(b) The court may fix a reasonable fee for each court-appointed examiner and may require the fee to be paid by any or all of the parties or by the Texas Department of Human Resources, if the department is a party of the suit, in the amounts and in the manner directed, or the

court may tax all or part or none of the fee as costs in the suit.

(c) A party may employ other qualified examiners of blood tests. The court may order blood samples made available to these examiners if requested.

Section 13.04. Pretrial Proceedings: Conference

(a) After completion of the blood tests, the court shall order all parties to appear, either in person or by counsel, at a pretrial conference. The court shall call its appointed examiners to testify in person or by deposition about their tests and findings. A party may call other qualified examiners of blood tests to testify.

(b) Witnesses called by the court are the court's witnesses, and witnesses called by a party are that party's witnesses. The court and the parties may examine and cross-examine all witnesses.

(c) All evidence presented at the pretrial conference is a part of the record of the case.

Section 13.05. Pretrial Proceedings: Effect of Blood Tests

(a) At the conclusion of the pretrial conference, if the court finds that the tests show by clear and convincing evidence that the alleged father is not the father of the child, the court shall dismiss the suit with prejudice.

(b) If the court finds that the blood tests fail to show by clear and convincing evidence the alleged father is not the father of the child, the court shall set the suit for trial.

Section 13.06. Evidence at Trial

(a) Unless otherwise permitted by the court on a showing of good cause, a party may call to testify on the results of the blood tests only those experts who testified at the pretrial conference.

(b) A witness called by a party at the trial is that party's witness.

(c) If the blood tests show the possibility of the alleged father's paternity, the court may admit this evidence if offered at the trial.

(d) Evidence of a refusal by the respondent to submit to a blood test is admissible to show only that the alleged father is not precluded from being the father of the child.

Section 13.07. Settlement

The child must be a party to a settlement agreement with the alleged father. The child shall be represented in the settlement agreement by a guardian ad litem appointed by the court. The court must approve any settlement agreement, dismissal, or nonsuit.

Section 13.08. Decree

(a) On a verdict of the jury, or on a finding of the court if there is no jury, that the alleged father is the father of the child, the court shall issue an order designating the alleged father as the father of the child.

(b) On a verdict of the jury, or on a finding of the court if there is no jury, that the alleged father is not the father of the child, the court shall issue an order declaring this finding.

Section 13.09. Effect of Decree Establishing Paternity

The effect of a decree designating the alleged father as the father of the child is to create the parent-child relationship between the father and the child as if the child were born to the father and mother during marriage.

Section 13.21. Voluntary Legitimation

(a) If a statement of paternity has been executed by the father of an illegitimate child, the father or mother of the child or the Texas Department of Human Resources may file a petition for a decree designating the father as a parent of the child. The statement of paternity must be attached to the petition.

(b) The court shall enter a decree designating the child as the legitimate child of its father and the father as a parent of the child if the court finds that:

(1) the parent-child relationship between the child and its original mother has not been terminated by a decree of a court;

(2) the statement of paternity was executed as provided in this chapter, and the facts stated therein are true; and

(3) the mother or the managing conservator, if any, has consented to the decree.

(c) The requirement of consent of the mother is satisfied if she is the petitioner. If the entry of the decree is in the best interest of the child, the court may consent to the legitimation of the child in lieu of the consent of the mother or managing conservator.

(d) A suit for voluntary legitimation may be joined with a suit for termination under Chapter 15 of this code.[1]

(e) A suit under this section may be instituted at any time.

Section 15.02. Involuntary Termination of Parental Rights

A petition requesting termination of the parent-child relationship with respect to a parent who is not the petitioner may be granted if the court finds that:

(1) the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return; or

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months; or

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months; or

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child; or

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct

which endangers the physical or emotional well-being of the child; or

(F) failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition; or

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence; or

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth; or

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Section 34.05 of this code; or

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Texas Education Code; or

(ii) the child's absence from his home without the consent of his parents or guardian for a substantial length of time or without the intent to return; or

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by Section 15.03 of this code; and in addition, the court further finds that

(2) termination is in the best interest of the child.